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SENATE

REPORT
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DRUNK DRIVING PREVENTION ACT OF 1988

AUGUST 2 (legislative day, AUGUST 1), 1988.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2367]

The Committee on Environment and Public Works, to which was referred the bill (S. 2367) to promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

S. 2367, as reported, establishes a new incentive grant program to encourage the States to adopt tough, effective laws to reduce the incidence of drunk driving. The new grants are intended to assist States in providing for an expedited driver's license suspension or revocation system and self-sustaining drunk driving prevention programs.

This legislation also requires the Secretary of Transportation to enter into an agreement with the National Academy of Sciences to conduct a study to determine the appropriate blood alcohol concentration at which the driver of a motor vehicle should be deemed to be under the influence of alcohol. In addition, the legislation directs the Secretary of Transportation to conduct a study on a process for providing nationwide information to law enforcement officials on prior arrests and convictions of drivers for drunk driving.

Funding for the Drunk Driving Prevention Act of 1988 is provided with contract authority from the Highway Account of the Highway Trust Fund in the amount of $125 million over the next three years. The sums authorized are not subject to any obligation limita-

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tion for State and community highway safety programs and are not subject to any other obligation ceiling.

BACKGROUND

The Committee on Environment and Public Works, which has jurisdiction over the Federal-aid highway program, is responsible for the safe design, construction, and operation of the Federal-aid highway system. The Committee is concerned with the threat drunk drivers present to highway safety and supports incentive grants funded out of the Highway Trust Fund to assist States in their efforts to enact tougher drunk driving laws.

Among the recent drunk driving measures referred to the Committee have been the minimum drinking age act; legislation making that law permanent; and a bill to address the problem of intoxicated drivers operating commercial motor vehicles. These cashes measures have all been enacted.

S. 2367 was introduced on May 11, 1988 by Senator Lautenberg with Senators Danforth, Bentsen, Pell, Gore, Weicker, and Chafee cosponsoring. On June 16, Senator Reid, joined by Senator Lautenberg, introduced S. 2523 which was also referred to the Committee. S. 2523, in contrast to S. 2367, requires States to enact stronger penalties for drunk driving, or face the loss of Federal-aid highway funds. A hearing on both S. 2367 and S. 2523 was held on June 29 at the full Committee level. On July 14, the Committee ordered S. 2367 favorably reported, as amended.

Funding for the new proposals in S. 2367 is provided with contract authority from the Highway Account of the Highway Trust Fund in the amount of $25 million for fiscal year 1989 and $50 million per year for fiscal years 1990 and 1991. These sums are outside all obligation limitations. For budgetary purposes, they represent new spending.

GENERAL STATEMENT

Over the past decade, a quarter of a million people have been killed as a result of the actions of drunk drivers. More than 50 percent of all highway deaths are alcohol related. Each year about 660,000 highway crashes are alcohol related. These crashes result in over 23,000 fatalities and 560,000 injuries each year. In 1987, close to 24,000 lives were lost in alcohol-related crashes. The total cost to society of drunk driving is estimated at $26 billion annually.

While nearly 58,000 Americans were killed in the Vietnam War, over five times that number died during the same period in alcohol-related crashes on U.S. highways. Every 22 minutes there is an alcohol-related fatality. One-third of all these fatalities are innocent victims. Further, the problem is so widespread that two out of every five Americans will be casualties of an alcohol-related crash at some point in their lives.

In Kentucky this past May, the driver of a pick-up truck collided with a bus carrying 67 people home from a church outing. Two adults and 25 teenagers were killed in the fiery crash—the worst collision involving a drunk driver in U.S. history. The truck driver has been charged with 27 counts of murder, following a test that measured his blood alcohol content at 0.24 percent, more than

twice the 0.10 level of legal intoxication in Kentucky and in most other States.

A month later in northern Virginia, a 10-year-old girl, waiting hand-in-hand with her mother for a school bus, was struck by a car and killed. The driver was charged with driving while intoxicated and manslaughter.

These cases have received considerable attention, but the problem of drunk driving is constant. Based on 1987 figures, there were an average of three deaths an hour, 65 deaths a day, and almost 500 deaths every week in alcohol-related crashes. At present, the problem of drug abuse is a major national concern, but in fact alcohol is the most widely abused drug. In short, drunk driving is among the most serious public health and safety concerns in the United States.

Starting in 1970, the Federal Government began to take a sustained interest in alcohol traffic safety programs. Congress passed drunk driving laws to provide incentive grants to States, to update the National Driver Register, and to set the national minimum drinking age at 21 years. States have been active too, passing over 500 new laws to tighten enforcement. A heightened public awareness and the diligent work of citizens' groups have also helped reduce the incidence of drunk driving during the 1980's.

State governments have the primary responsibility for enforcing drunk driving laws. The first major Federal initiative took place 18 years ago with the establishment of the Alcohol Safety Action Program, an effort to develop a systematic approach to a serious national problem. A total of $78 million in grants was provided to 35 localities under this 3-year program.

At present, the primary Federal programs to counter drunk driving are the section 402 program—State and Community Grants—and the section 403 program—Highway Safety Research and Development Grants. On an annual basis, $40 million in 402 funds and close to $3 million in 403 funds are being spent for alcohol programs.

Also important is the section 408, Alcohol Incentive Grant Program, which was enacted in 1982 to further promote alcohol traffic safety. There is a total of $125 million in authorized funding, and approximately $23 million has been obligated to the 17 States that have qualified to date (Alabama, Alaska, Arizona, Delaware, Indiana, Louisiana, Maine, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Rhode Island, Utah, and Washington). Among the criteria for basic grants are a prompt, mandatory license suspension; mandatory sentences; and establishment of a maximum blood alcohol content of 0.10 percent.

The funding for 402, 403, and 408 programs is all provided from the Highway Account of the Highway Trust Fund.

Summary of Major Provisions

The bill, as reported, amends chapter 4 of title 23, United States Code, by adding a new section 410. The following provisions are included in this new section:

1. The bill authorizes a new incentive grant program, to be funded out of the Highway Trust Fund, to encourage the States to

adopt tough, effective laws to reduce drunk driving. The program is authorized for 3 years, at a level of $25 million in the first year, and $50 million in each of the following 2 years. Two levels of grants are authorized—basic and supplemental. States qualifying for the basic grant will be eligible to qualify for supplemental funds. The amount of funding a State can receive will be limited to:

(a) for the basic grant provisions, 30 percent of funds apportioned under the section 402 highway safety program; and

(b) for the supplemental provisions, 20 percent of funds apportioned under the section 402 highway safety program.

2. The bill directs the Secretary of Transportation to enter into an agreement with the National Academy of Sciences to conduct a study to determine the appropriate blood alcohol concentration at which the driver of a motor vehicle should be deemed to be under the influence of alcohol.

3. The bill further directs the Secretary of Transportation to conduct a study of a system for providing nationwide information, similar to that contained in the National Driver Register, to law enforcement officials on prior arrests and convictions of drivers for drunk driving.

Section-by-Section Analysis

SECTION 1. SHORT TITLE

This section provides that this legislation may be cited as the "Drunk Driving Prevention Act of 1988."

SECTION 2. DRUNK DRIVING PREVENTION PROGRAMS

This section adds a new section 410 to title 23, United States Code, authorizing a new incentive grant program to encourage States to adopt laws that have proven to be effective in reducing drunk driving fatalities and injuries. It authorizes the Secretary of Transportation to make basic and supplemental grants to the States, in accordance with the criteria outlined in the bill. In receiving such grant funds, a State may not reduce the amount of funds already allocated for drunk driving programs.

The grant program is authorized for 3 years, and is intended to provide seed money to the States to develop enhanced, comprehensive drunk driving programs. Accordingly, the percentage of total costs of a State program borne by the grant funds will decrease from 75 percent of program costs in the first year of participation to 25 percent of costs in the third year of participation subject to an annual cap of 30 percent of section 402 apportionments for basic grants and an annual cap of 20 percent of section 402 apportionments for supplemental grants.

The amount of funding a State can receive is linked not only to the matching share requirements described above but also to the apportionments that State receives under section 402 of title 23, United States Code. A State meeting the basic criteria will receive a grant equaling 30 percent of apportionments under section 402 in fiscal year 1989. A State meeting the basic requirements is then eligible for supplemental funding, at an aggregate level of 20 percent of section 402 apportionments.

Participation in the new section 410 program will not affect, in any way, a State's eligibility for, or participation in, the 402, 403, or 408 programs.

There are two eligibility criteria for basic grants. First, a State must adopt a program for the administrative revocation or suspension of the driver's license of an individual found to be driving while under the influence, as determined by one or more chemical tests, or an individual who refuses to submit to such a test.

Administrative revocation or suspension requires that, upon making the determination that the driver in question is under the influence, the law enforcement official involved must take possession of the driver's license, and provide the driver with a notice of suspension or revocation. The actual suspension or revocation is to take effect within 30 days of the date on which the notice is served. While a judicial hearing may not take place within the 30 day timeframe, it is expected that an opportunity for an administrative review will be provided within that time. Although the bill allows a State 30 days, the Committee hopes that States will proceed as quickly as possible.

The Committee expects that the Secretary, in promulgating regulations to implement this legislation, will require the States to provide for periods of "hard" suspension, during which time an offender is not allowed conditional driving privileges.

The Secretary is charged with ensuring that any administrative procedure adopted by a State in accordance with the criteria of this bill affords due process.

The Insurance Institute for Highway Safety recently released a study, *Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving.* The study concluded that administrative revocation/suspension laws, where they are now in place, have been extremely effective in reducing drunk driving fatilities; it found a reduction of driver involvement in fatal crashes of 9 percent in States having such laws.

As a second criterion for a basic grant, a State must adopt a self-sustaining, comprehensive drunk driving program. This is to ensure that State and local law enforcement groups and other agencies will have adequate resources to sustain their drunk driving prevention activities. The Committee expects that such a program will include, but not be limited to, the following: enforcement; prosecution; treatment, such as rehabilitation and education; adjudication; administrative costs; public defense; and special licensing. These areas should be emphasized in such a program, and a significant portion of the costs of operating these program areas must be covered.

A number of States have programs that return fines, penalties, and fees to the agencies responsible for drunk driving prevention and enforcement programs. The State of New York, for example, has a model program. While it may not be feasible to cover completely the costs of an aggressive, comprehensive drunk driving program, it is the intent of the Committee that the revenues generated by such a program, or an amount equivalent thereto, must be available for the program's continued operation in order to satisfy the criteria of this legislation.

It is the understanding of the Committee that a number of States have Constitutional provisions requiring the deposit of all fines and penalties into an educational fund. The Committee adopted an amendment that allows such States to be considered eligible under this criterion, if they return an amount of non-Federal funds equivalent to the amount of fines and penalties generated for the continuation of their programs.

The bill outlines four additional criteria for supplemental grants. These grants can only be awarded to States after they have met the two criteria for basic grants. By meeting one or more of the supplemental criteria, States can receive incentive grants equal to 20 percent of their section 402 funds. The Committee believes that each of these supplemental criteria is an important step in working toward the goal of reducing drunk driving deaths and injuries, and that incremental funding should be provided to the States upon adoption of each criterion.

The first criterion, is adoption of a law calling for mandatory blood alcohol concentration testing, with probable cause, of drivers involved in collisions resulting in a fatality or serious injury. Currently, the States perform such tests on only about 40 percent of drivers in fatal crashes. In implementing the legislation, it is expected that at least 75 percent of fatally injured drivers and at least 50 percent of drivers involved in accidents resulting in serious injury will have their blood alcohol concentration tested. This broadened testing requirement will provide more uniform, reliable data on drunk driving.

Second, the bill encourages States to adopt a system under which drivers below the age of 21 are issued driver's licenses that are readily distinguishable from those of drivers over the age of 21. In accordance with P.L. 98–363 and P.L. 99–272, all 50 States have now adopted a minimum age of 21 for the legal purchase or public possession of alcoholic beverages. The use of specialized licenses will assist in the enforcement of the minimum age requirement. Therefore, these licenses, in addition to being readily distinguishable from other licenses, should be tamper-resistant. Several States currently have licenses for under-21 drivers that are either color-coded or contain a different type of photograph (e.g., a profile view instead of a frontal view) for those drivers. It is the intent of the Committee to encourage more widespread use of this practice. It is hoped that States will adopt this system as part of a comprehensive effort to enforce the minimum drinking age law and further reduce the disproportionate drunk driving fatalities and injuries among 16–20 year olds.

The third supplemental grant criterion encourages the States to adopt laws restricting the consumption of alcoholic beverages and possession of open containers of alcoholic beverages in the passenger areas of motor vehicles. The provision allows the States, with the approval of the Secretary, to make exceptions, such as to allow the consumption of alcoholic beverages, or the possession of open containers of alcoholic beverages, by passengers in charter buses or other similar vehicles.

The final supplemental criterion encourages the States to adopt programs providing for the confiscation of vehicle registrations and license plates of vehicles owned by repeat offenders of drunk driv-

ing laws, or individuals found to be operationg a motor vehicle inspite of a current license suspension or revocation resulting from a drunk driving conviction. It is expected that the State agency responsible for taking this action will be allowed the flexibility to address such issues as multiple ownership of a vehicle.

In 1983, the National Transportation Safety Board published a report entitled *Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers.* The report contained a finding that two thirds of those who have had their licenses suspended or revoked admitted to driving during the period of suspension or revocation. Other studies have estimated that as many as 80 percent of people with suspended or revoked licenses continue to drive. If license suspensions are to be an affective penalty, an effort must be made to ensure that those who have suspended licenses do not drive.

A number of States have addressed this problem by providing for the impoundment or forfeiture of the vehicle registration and license plates. Obviously, such a penalty makes it much more difficult to drive with a suspended license. As of January 1, 1988, 11 States (Alaska, Arizona, Delaware, Indiana, New York, North Carolina, North Dakota, Ohio, South Dakota, Virginia, and Wyoming) permit judges to impose such a penalty. On August 1, 1988, a law will go into effect in Minnesota that will require judges to revoke the vehicle registration and impound license plates of persons with three drunk driving offenses within five years. The Committee believes that the Minnesota law, tailored to the individual needs of the States, can be an effective measure in the fight against drunk driving.

In determining the eligibility of a State for basic and supplemental grant funds under this legislation, the Secretary is expected to accept any laws meeting the above-referenced criteria already adopted by the States.

SECTION 3. REGULATIONS

This section requires the Secretary of Transportation to promulgate regulations implementing the incentive grant program authorized in this bill. The Secretary shall issue proposed regulations not later than December 1, 1988. In accordance with normal procedure, the Secretary will allow for an appropriate comment period, and take any comments into consideration in issuing a final rule. The bill requires that the Secretary issue final regulations not later than March 1, 1989, and that those regulations be published at that time in the Federal Register.

SECTION 4. BLOOD ALCOHOL CONCENTRATION STUDY

This section directs the Secretary to enter into an agreement with the National Academy of Sciences to conduct a study to determine the blood alcohol concentration [BAC] at which a driver is under the influence of alcohol. Most of the States have adopted a standard of 0.10 percent BAC as the level at which a driver is under the influence. Two States, as well as a number of other countries, have adopted lower BAC levels, and some highway safety experts believe a more stringent standard is warranted throughout

the United States. To better assess the appropriateness of a lower level, the Committee believes a study is needed.

The Transportation Research Board [TRB] of the National Academy of Sciences recently completed a similar study, *Zero Alcohol and Other Options: Limits for Truck and Bus Drivers.* TRB has considerable knowledge of transportation issues in general and of the problem of drunk driving. The data collected for the earlier TRB study will be of value and help lay the groundwork for conducting the new BAC study. The Committee asks that the National Academy of Sciences submit its findings to the Secretary within one year of the date of enactment.

SECTION 5. NATIONAL DATA BANK STUDY

This section directs the Secretary of Transportation to conduct a study of a system for providing nationwide information to law enforcement officials on the prior arrests and convictions of drivers for drunk driving.

The Committee believes that the Federal Government should establish a national data bank to provide information concerning previous arrests for drunk driving related offenses to all State law enforcement officials. The problem of drunk driving recidivism is astounding. State law enforcement officials and prosecutors must have access to complete records in order to address the issue of repeat offenders.

The Department of Transportation currently operates the National Driver Register [NDR] and is implementing the modernized version of that system, as directed by the National Driver Register Act of 1982. The existing NDR provides records of previous license suspensions to State agencies charged with the responsibility of issuing driver's licenses; the new NDR will also indicate convictions for alcohol-related motor vehicle offenses. Currently, the new NDR capability is being tested through a pilot program. The new NDR appears well on its way to providing this essential service. With some revision, the new NDR may be capable of providing State law enforcement officials and prosecutors with complete information concerning previous arrests. The Committee directs the Secretary of Transportation to study this possibility.

In addition, the Department of Justice, through the Bureau of Justice Statistics, compiles data on a wide range of common law crimes including drunk driving. This data source may be helpful in creating a national data bank on drunk driving arrests.

The study should analyze Federal and State record-keeping methods, and identify problems in compiling the necessary information for the national data bank. The study should also outline a comprehensive program for creating and maintaining a system that will provide State law enforcement officials with all information concerning previous drunk driving offenses committed in any of the United States.

HEARINGS

A full Committee hearing was held on June 29, 1988, on the subject of drunk driving and on S. 2367 and S. 2523 in particualr. Testimony was received from representatives of the National Highway

Traffic Safety Administration and the Federal Highway Administration within the U.S. Department of Transportation, the American Association of State Highway and Transportation Officials, the North Dakota State Highway Department, the Las Vegas Metropolitan Police Department, the New Castle County (Delaware) Police Department, the Mothers Against Drunk Driving, the National Safety Council, and the Insurance Institute for Highway Safety.

Witnesses discussed the status of efforts at Federal, State and local levels to reduce the problem of drunk driving; the effectiveness of incentives versus sanctions; accomplishments and new initiatives in enforcement and education; the role of government and citizens' groups; administrative systems for license suspensions and the appropriate time period for administrative action; self-sustaining enforcement programs; blood alcohol content levels and the establishment of a specified threshold as an offense per se; color-coded licenses for drivers under the age of 21; and other drunk driving countermeasures.

Rollcall Votes During Committee Consideration

There were no rollcall votes taken during consideration of this bill.

Senator Lautenberg offered three amendments to S. 2367 including: (1) a supplemental grant provision for a ban on open containers of alcohol in motor vehicles; (2) a time extension from 15 to 30 days for administrative revocation; and (3) assurances that the fines collected, or an equivalent amount, are returned to local communities for self-sustaining drunk driving programs.

Next, on behalf of Senator Reid, Senator Lautenberg offered two amendments including: (1) eligibility for a supplemental grant if a State provides for the suspension of motor vehicle registration and forfeiture of license plates; and (2) a study of how to develop a data bank to provide information on previous drunk driving offenses.

Senator Lautenberg then moved adoption of S. 2367, incorporating the above amendments. Senator Stafford seconded the motion. The Committee adopted the motion by a unanimous voice vote on July 14.

Evaluation of Regulatory Impact

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires the Committee to evaluate the regulatory impact of the reported bill. It is not anticipated that this bill will impose any significant new regulatory burden.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 1988.

Hon. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2367, the Drunk Driving Prevention Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2367.
2. Bill title: Drunk Driving Prevention Act of 1988.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, July 14, 1988.
4. Bill purpose: S. 2367 would establish new grants for States that adopt and implement drunk driving enforcement programs and would provide contract authority from the Highway Trust Fund of $25 million in fiscal year 1989 and $50 million in each of fiscal years 1990 and 1991. This contract authority would be exempt from the obligation ceiling for State and community highway saety programs. States could receive these grants only if they adopt drunk driving enforcement programs conforming to standards set by the bill and could use the funds only to implement such programs.
5. Estimated cost to the Federal Government: S. 2367 provides direct spending authority from the Highway Trust Fund, as shown in the following table.

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Budget authority	25	50	50	.....	.....
Estimated outlays	10	26	39	28	17

The costs of this bill fall within budget function 400.

Basis of Estimate: For the purpose of this estimate, CBO assumes that H.R. 2367 will be enacted by October, 1988. The budget authority amounts are specified in the bill, and outlay estimates are based on historical spending patterns.

The bill also directs the Department of Transportation to make arrangements with the National Academy of Sciences to conduct a study of blood alcohol levels and to conduct another study of systems which could provide State law enforcement officials with information on previous drunk driving arrests. Based on information provided by the Department of Transportation, CBO expects that

these studies would cost about $500,000. The bill would not authorize any additional funds for this purpose.

6. Estimated cost to State and local governments: The bill would fund additional grants to States that establish conforming drunk driving programs. The Federal share of the costs of these programs would be 75 percent in the first year, then decline to 25 percent in the third.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Marjorie Miller.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Changes in Existing Law

In compliance with paragraph 12 of the rule XXVI of the Standing Rules of the Senate, the Committee reports that the bill makes no changes in existing law.

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